

Not So Fast: Employers Receive Reprieve from Amended FLSA Regulations

Chamberlain Hrdlicka previously reminded employers about important wage and hour regulations that were to take effect on December 1, 2016. The regulations significantly increased the minimum salary requirement for employees to be classified properly as white collar, exempt employees under the Fair Labor Standards Act (“FLSA”). Shortly before Thanksgiving, however, a Texas federal judge enjoined the Department of Labor, its Wage and Hours Division, and their agents from implementing and enforcing the regulations.

As part of the current administration's goal to modernize the FLSA's exemptions from its minimum wage and overtime pay requirements, the Secretary of Labor hiked the minimum weekly salary requirement for exempt white collar employees from \$455 to \$913 (or annualized from \$23,660 to \$47,476). Twenty-one states, numerous chambers of commerce, and other business groups filed suit to enjoin implementation of the new requirements. On November 22, 2016, the Court imposed a nationwide injunction preventing the government and its agents from implementing and enforcing the amended regulations until a full trial on the merits can occur.

Enacted in 1938, the FLSA established minimum wage and overtime pay obligations and exemptions from those requirements, including for employees employed in a “bona fide executive, administrative, or professional capacity.” Congress delegated the power to define those terms to the Secretary of Labor who, in turn, permitted the Department of Labor to issue regulations interpreting this white collar exemption.

The Court found Congress intended the white collar exemption to apply to employees who actually performed executive, administrative, and professional duties, regardless of the amount of their compensation. The Department of Labor's final rule stated white collar employees who earn less than \$913 per week do not qualify for the white collar exemption and, therefore, would be eligible for overtime pay. By making the salary requirement potentially dispositive of the issue, the

Court determined the Department of Labor exceeded its authority, ignored Congress's statutory intent, and improperly supplanted the duties test. The Court described the increased salary requirement as a “de facto salary-only test.” Accordingly, the challengers showed the amended regulations exceed the Department of Labor's authority and are unlawful.

Though certainly meaningful, employers should recognize the nationwide injunction is not a permanent injunction. The injunction preserves the status quo while the lawsuit continues to a final hearing on the merits. A final decision as to the appropriateness and enforceability of the amended regulations will come in the future, but the ruling halts the regulations from taking effect as originally planned.

The injunction calls into question not only the viability of the Department of Labor's recent amendments but also the appropriateness of defining bona fide executive, administrative, and professional employees by imposing a minimum salary requirement. The Court expressly declined to comment on the lawfulness of a salary level test for the white collar exemption. Ultimately, employers may see the contours of the FLSA's white collar exemption dramatically altered by invalidating the salary level test altogether or reducing the significance the Department of Labor and Wage and Hour Division place on an employee's compensation.



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